IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10053 OF 2004

M/s.Aravali Securities and Finance Limited & Anr. : Petitioners
V/s.
SBI Commercial & International Bank Ltd. & Anr. : Respondents
...
Mr.S. C. Chaturvedi instructed by M/s.Chaturvedi & Associates for the petitioners.
Mr.V. J. Shah instructed by M/s.Theba & Associates for respondent No.1.
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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

DATE : APRIL 4, 2005.

P.C.:

1. The petitioners have challenged the order of the Debts Recovery Appellate Tribunal, Mumbai, dismissing their appeal and upholding the decision of the Debts Recovery Tribunal refusing to frame a preliminary issue of territorial jurisdiction.

2. The respondent No.1, SBI Commercial & International Bank Limited , has sued the petitioners for a decree in the sum of Rs.36,95,517.60 as on 8.10.2001 with future interest at the rate of 21% per annum compounded quarterly till realisation. The Bank

has filed the application for recovery of its dues in the Debts Recovery Tribunal at Mumbai. According to the Bank, the loan has been sanctioned and disbursed to the petitioners in Mumbai. The deeds of hypothecation, letter of guarantee and other security documents have been executed in Mumbai. The documents appear to contemplate re-payment at Mumbai *prima facie* because the petitioners have agreed to repay the Bank which has its office in Mumbai. The Appellate Tribunal has also observed that the loan is repayable at Mumbai. Clearly, therefore, a part of the cause of action *prima facie* has arisen at Mumbai.

3. The petitioners applied to the Debts Recovery Tribunal No.II for framing a preliminary issue as to the territorial jurisdiction of the Tribunal alleging that no part of the cause of action has arisen within the jurisdiction of the Tribunal at Mumbai. According to them, since they carry on business at New Delhi, the cause of action has arisen at New Delhi. They also took the plea that the documents were executed at New Delhi only, which *prima facie*, does not appear to be correct, on a perusal of the compilation of

documents submitted to us. The documents are addressed to the Bank at Mumbai. A clear example is the agreement of hypothecation dated 21.5.1996. The Debts Recovery Tribunal held that the petitioners had not made out a case of an inherent lack of jurisdiction and that it was in the interests of justice to try all the issues together.

4. The petitioners preferred an appeal before the Debts Recovery Appellate Tribunal. In our view, the DRAT has correctly taken into account what is most relevant and that is the averments in the application for recovery. On perusing the appeal, the DRAT found that the Bank has sanctioned and disbursed the loan to the petitioners and the amount was also repayable at Mumbai. The DRAT has considered it appropriate not to try the issue of territorial jurisdiction as a preliminary issue. Having regard to the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as the “Act”, the Original Application has to be decided within a period of six months. Section 19, sub-section (24) casts an obligation to dispose of the

application, as expeditiously as possible, and to dispose it of within 180 days from the receipt of the application. In any case, the DRAT has done so on the basis of the fact that a *prima facie* cause of action partly arises within the jurisdiction of the Tribunal at Mumbai vide section 19(1)(c) of the Act.

5. The learned counsel for the petitioners submitted that the Debts Recovery Tribunal was bound in law to decide the question of territorial jurisdiction first, in the same manner as the Court is bound under section 9A of the Code of Civil Procedure as amended by Maharashtra Act No.65 of 1977. It is true that this Court has held in The Municipal Corporation of City of Thane v. Ashokkumar Bibhuti Narayan Rai (Writ Petition No.9696 of 2004) decided on 21.3.2005 that the issue of jurisdiction raised by way of an application under section 9A of the Code of Civil Procedure must be tried first, even if it requires evidence to be taken and even though this view is a departure from the policy underlying Order 14 Rule 2 of the Code of Civil Procedure. We are, however, of the view that the Debts Recovery Tribunal is not bound in the same manner as

ordinary Courts are, by the code of Civil Procedure, 1908. Section 22 of the Act, insofar as it relevant, reads as follows:-

> **"22. Procedure and powers of the Tribunal and the Appellate Tribunal**.--(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
>
> (2) .....
>
> (3) ....."

6. Having regard to the obligation casts on the Tribunal to endeavour to dispose of an application for recovery within 180 days from the receipt of the application, it would go against the intention

of Parliament to hold that the Tribunal must decide the issue of territorial jurisdiction first. Obviously, if the Tribunal commits an error while deciding the issue of jurisdiction, having left the other issues untouched, and if the Appellate Tribunal or superior Court reverses the decision of the Tribunal, it would entail an unnecessary delay. We are of view that Parliament clearly intended to avoid this.

7. In the circumstances, there is no merit in this Petition which is hereby dismissed.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.